

# **DAIRY INDUSTRY STABILIZATION ACT 1977**

## **No. 51 of 1977**

### **TABLE OF PROVISIONS**

#### **PART I—PRELIMINARY**

**Section**

1. Short title
2. Commencement
3. Repeal
4. Interpretation

#### **PART II—COLLECTION OF LEVY**

5. Time for payment of levy
6. Penalty for non-payment
7. Recovery of levy
8. Refund of levy

#### **PART III—STABILIZATION FUND AND STABILIZATION PAYMENTS**

9. Dairy Products Stabilization Trust Fund
10. Payments into Fund
11. Separate accounts to be kept in Fund
12. Stabilization payments
13. Rates of stabilization payments
14. To whom stabilization payments payable
15. Benefit of stabilization payments to be passed on to producers
16. Application of the Fund
17. Corporation may make certain payments from Fund
18. Moneys of Fund to be kept in separate bank account
19. Investment of moneys of Fund

#### **PART IV—MISCELLANEOUS**

20. Power to call for returns
21. Access to premises
22. Offences in relation to returns, &c.
23. Averments
24. Appointment of authorized persons
25. Regulations

#### **SCHEDULE**

##### **Repealed Acts**

# DAIRY INDUSTRY STABILIZATION ACT 1977

## No. 51 of 1977

An Act providing for the collection of Levy imposed by the *Dairy Industry Stabilization Levy Act 1977* and the establishment of a Dairy Products Stabilization Trust Fund and for other purposes.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:—

### PART I—PRELIMINARY

1. This Act may be cited as the *Dairy Industry Stabilization Act 1977*.<sup>1</sup> Short title.
2. This Act shall come into operation on 1 July 1977. Commencement.
3. The Acts specified in the Schedule are repealed. Repeal.
4. (1) In this Act, unless the contrary intention appears— Interpretation.
  - “authorized person” means a person who is, by virtue of an appointment under section 24, an authorized person for the purposes of the provision in which the expression occurs;
  - “Fund” means the Dairy Products Stabilization Trust Fund established by section 9;
  - “levy” includes a penalty under section 6;
  - “Levy Act” means the *Dairy Industry Stabilization Levy Act 1977*;
  - “maturation period”, in relation to any cheese, means the period (if any) after the cheese is produced at a factory during which the cheese is kept, by or on behalf of the proprietor of the factory, at the factory or at some other place approved by an authorized person for the purposes of this definition, for the purpose of the controlled ageing of the cheese;
  - “month” means a month of the year;
  - “producer”, in relation to any whole milk, means the person who, at the time when the whole milk was produced, was the owner of the cow that produced it, or, if, at that time, a person other than the owner of the cow was entitled to obtain the whole milk from the cow, that other person;
  - “separate account” means a separate account kept in the Fund in accordance with sub-section 11 (1) or regulations making a provision referred to in paragraph 11 (3) (a);

“stabilization payment” means a stabilization payment payable under this Act.

(2) Where the Minister considers that, for the purposes of this Act, it is reasonable that the maturation period in relation to particular cheese should end on a particular date, the Minister may, by notice in writing served on the owner of the cheese, fix that date as the last day of the maturation period in relation to that cheese for the purposes of this Act.

(3) A date fixed by a notice under sub-section (2) shall not be earlier than the date on which the notice is served.

(4) Where cheese kept for a maturation period weighs less on the last day of that period than it did on the first day, the weight of the cheese shall, for the purpose of calculating levy in respect of the cheese, be deemed to be the weight of the cheese on that last day.

(5) For the purposes of this Act, the period commencing on the date prescribed for the purposes of sub-section 6 (2) of the Levy Act with respect to a kind of dairy products and ending on the following 30 June, and each subsequent period of 12 months, is a production period with respect to that kind of dairy products.

(6) The regulations may provide that a production period with respect to a kind of dairy products shall be divided into 2 or more periods each of which shall be a production period with respect to that kind of dairy products.

(7) Before making regulations for the purposes of sub-section (6), the Governor-General shall take into consideration any relevant recommendation made to the Minister by the Corporation after consultation with the Advisory Committee.

## PART II—COLLECTION OF LEVY

Time for  
payment of  
levy.

5. (1) Subject to sub-section (2), levy on any dairy products becomes due and payable on the expiration of 14 days after the last day of the month immediately following the month in which the products were sold by or on behalf of the person by whom the levy is payable.

(2) If dairy products on which levy is imposed are still in the ownership of the proprietor of the factory at which they were produced at the expiration of the prescribed period after the end of the production period in which they were produced, the levy on those dairy products becomes due and payable on the expiration of 14 days after the last day of that prescribed period.

(3) Subject to sub-section (2), where dairy products on which levy is imposed are used by the person by whom the levy is payable in the production of other products, whether dairy products or not, levy on the dairy products so used becomes due and payable on the expiration of 14

days after the last day of the month immediately following the month in which the dairy products were so used.

(4) In this section—

“levy” does not include a penalty under section 6;

“prescribed period” means—

- (a) in relation to dairy products of a class in respect of which a period is prescribed for the purposes of this definition (whether that period is prescribed in respect of dairy products generally or a prescribed class or prescribed classes of dairy products)—the period so prescribed; or
- (b) in relation to dairy products of a class in respect of which a period is not prescribed for the purposes of this definition—6 months.

6. (1) Subject to this section, where the liability of a person to pay levy is not discharged at or before the time when that levy becomes due and payable, there is payable by that person to the Commonwealth, by way of penalty, in addition to that levy, an amount calculated at the rate of 10 per centum per annum upon that levy, or upon that part of that levy from time to time remaining unpaid, to be computed from the time when that levy became due and payable. Penalty for non-payment.

(2) The Minister or, subject to sub-section (3), an authorized person may, in a particular case, for reasons that the Minister or the authorized person, as the case may be, in his discretion thinks sufficient, remit the whole or a part of an amount payable under this section.

(3) A remission granted under sub-section (2) by an authorized person shall not exceed \$1,000.

(4) In this section, “levy” does not include a penalty under this section.

7. An amount of levy that becomes due and payable shall be deemed to be a debt due to the Commonwealth. Recovery of levy.

8. (1) Where any levy has been overpaid, the amount overpaid shall be refunded by the Commonwealth. Refund of levy.

(2) Where—

- (a) an amount of levy has been refunded by the Commonwealth in accordance with the Levy Act or with sub-section (1) of this section; and
- (b) the amount so refunded has been taken into account in calculating the amount of a payment under sub-section 10 (1),

the Corporation shall pay to the Commonwealth an amount equal to the amount so refunded.

**PART III—STABILIZATION FUND AND STABILIZATION  
PAYMENTS**

Dairy  
Products  
Stabilization  
Trust Fund.

**9.** (1) A fund is hereby established to be known as the Dairy Products Stabilization Trust Fund.

(2) The Fund is vested in the Corporation.

Payments  
into Fund.

**10.** (1) There shall be paid to the Corporation to be credited to the Fund, out of the Consolidated Revenue Fund, which is appropriated accordingly, amounts equal to the levy received by the Commonwealth from time to time.

(2) There shall be credited to the Fund—

- (a) moneys paid to the Corporation by the Reserve Bank as advances in accordance with an arrangement under section 23 of the *Dairy Produce Act* 1924, being advances for the purposes of the Fund;
- (b) moneys (other than amounts referred to in sub-section (1)) paid by the Commonwealth to the Corporation for the purposes of the Fund;
- (c) moneys paid by any person other than the Commonwealth to the Corporation for the purposes of the Fund;
- (d) moneys made available by the Corporation, whether by way of advance or otherwise, for the purposes of the Fund; and
- (e) interest received by the Corporation from the investment of moneys of the Fund.

Separate  
accounts to  
be kept in  
Fund.

**11.** (1) The following separate accounts shall be kept in the Fund:—

- (a) an account in respect of butter and butteroil produced during each production period;
- (b) an account in respect of casein produced during each production period;
- (c) an account in respect of skim milk powder and buttermilk powder produced during each production period;
- (d) an account in respect of whole milk powder produced during each production period;
- (e) an account in respect of cheese produced during each production period.

(2) There shall be credited to a separate account referred to in sub-section (1) of this section any moneys credited to the Fund under sub-section 10 (1) that were paid by the Commonwealth to the Corporation by reason of the receipt by the Commonwealth, from time to time, of levy in respect of dairy products to which the account relates.

(3) Where a product is prescribed for the purposes of paragraph (c) of the definition of “dairy products” in sub-section 4 (1) of the Levy Act, the regulations may make one of the following provisions:—

- (a) provision that a separate account in respect of the product so prescribed produced during each production period is to be kept in the Fund;
- (b) provision that any moneys credited to the Fund under subsection 10 (1) that were paid by the Commonwealth to the Corporation by reason of the receipt by the Commonwealth, from time to time, of levy in respect of the product so prescribed are to be credited to such separate account, or such separate accounts, as the regulations specify.

(4) Where moneys referred to in paragraph 10 (2) (a) or (d) are credited to the Fund, the Corporation shall direct the crediting of the moneys to one or more of the separate accounts.

(5) Where moneys referred to in paragraph 10 (2) (b) or (c) are credited to the Fund, the Corporation shall, having regard to the purposes for which the moneys were paid to the Corporation, direct the crediting of the moneys to one or more of the separate accounts.

(6) Where moneys of the Fund have been invested, the Corporation shall direct the crediting of any amount of interest paid to the Corporation in respect of the moneys so invested among each of the separate accounts having regard to the proportion of the moneys so invested that is credited to that account.

**12.** (1) Subject to this Act, a stabilization payment is payable on the production of dairy products at a factory during a production period with respect to the kind of dairy products in which those dairy products are included. Stabilization payments.

(2) A stabilization payment is not payable in respect of dairy products that are, by virtue of section 9 of the Levy Act, exempt from levy.

**13.** (1) The Minister shall, at the time that he thinks appropriate, determine, in accordance with this section, a rate of stabilization payment in respect of dairy products in respect of which a separate account is kept in the Fund. Rates of stabilization payments.

(2) The rate of a stabilization payment is the amount per 100 kilograms

ascertained in accordance with the formula  $\frac{100(a-b-c)}{d}$  where,

*a* is the aggregate of the amounts credited to the separate account in accordance with section 11, being moneys referred to in subsection 10 (1) or paragraph 10 (2) (b), (c) or (e) or moneys (other than advances) referred to in paragraph 10 (2) (d);

*b* is the amount of the cost of administering the Fund that has been debited to the separate account;

- c* is the aggregate of payments made under section 17 that have been debited to the separate account; and
- d* is the number of kilograms of dairy products to which the separate account relates that has been produced at factories in Australia, not being dairy products that were, by virtue of section 9 of the Levy Act, exempt from levy.

(3) The Minister may, from time to time, fix an interim rate of stabilization payment in respect of a kind of dairy products produced, or to be produced, during a production period, having regard to—

- (a) the anticipated amount of levy to be collected in respect of dairy products of that kind produced, or to be produced, during that production period;
- (b) the anticipated amount of that part of the cost of administering the Fund during that production period that is referable to that kind of dairy products;
- (c) the anticipated amount of payments to be made under section 17 in respect of dairy products of that kind produced during that production period;
- (d) the anticipated level of production at factories in Australia during that production period of dairy products of that kind; and
- (e) any recommendation with respect to an interim rate of stabilization payment for dairy products of that kind produced during that production period that is made to the Minister by the Corporation after consultation with the Advisory Committee.

(4) Advances on account of a stabilization payment may be paid at the appropriate interim rate fixed by the Minister under sub-section (3).

(5) Where the advance, or the aggregate of the advances, paid to a person on account of a stabilization payment exceeds the amount of that stabilization payment, the amount of the excess is repayable to the Corporation on demand in writing by the Corporation and, if not paid within 3 months after the demand, shall be deemed to be a debt due and payable to the Corporation.

To whom  
stabilization  
payments  
payable.

**14.** Subject to this Act, a stabilization payment in respect of any dairy products is payable to the person who is, at the time of their production, the proprietor of the factory at which they are produced.

Benefit of  
stabilization  
payments to  
be passed on  
to producers.

**15. (1)** Where the proprietor of a factory receives a stabilization payment in respect of any dairy products, he shall adjust the prices paid by him to the suppliers of the milk, cream or other substance from which the dairy products were produced, and take any other necessary action, to ensure that the benefit of that stabilization payment is passed on, in an equitable manner, to the producers of the whole milk from which the dairy products were produced or from which was derived the cream or other substance from which the dairy products were produced.

(2) Where, in relation to a particular stabilization payment, a proprietor of a factory fails to comply with sub-section (1), the amount of that payment is repayable to the Commonwealth on demand in writing by an authorized person and, if not paid within 3 months after the demand, shall be deemed to be a debt due to the Commonwealth.

(3) Where the Minister has reason to believe that a proprietor of a factory who is in receipt of stabilization payments is not complying with sub-section (1) with respect to those payments, he may, by writing signed by him, direct that the proprietor is not to be paid any further stabilization payments while the direction is in force.

(4) In this section, "stabilization payment" includes an advance on account of a stabilization payment.

**16.** (1) Subject to this section, moneys standing to the credit of the Fund may be expended— Application  
of the Fund.

- (a) in making stabilization payments or advances on account of stabilization payments;
- (b) in making payments under section 17;
- (c) in making repayments of advances, and payments of interest on advances, in accordance with an arrangement under section 23 of the *Dairy Produce Act 1924*, being advances credited to the Fund;
- (d) in making repayments of advances made available by the Corporation for the purposes of the Fund;
- (e) in meeting the expenses of the Corporation in administering the Fund and any pool maintained under sub-section 20AB (2) of the *Dairy Produce Act 1924*; and
- (f) in making payments under sub-section 8 (2).

(2) A payment referred to in paragraph (1) (a), (b) or (f) shall be debited to the separate account kept in respect of the class of dairy products to which the payment relates.

(3) A payment referred to in paragraph (1) (c) or (d) shall be debited to the separate account to which the advances to which the payment relates have been credited or, if those advances have been credited to 2 or more separate accounts, a part of the payment shall be debited to each of those separate accounts in such manner that the part so debited to a particular separate account bears the same proportion to the total payment as the part of the advances to which the payment relates that has been credited to that particular separate account bears to the total of those advances.

(4) Where a payment referred to in paragraph (1) (e) is made out of the Fund, the Corporation shall direct the allocation of the debit arising out of that payment among each of the separate accounts having regard to the proportion of the expenses to which the payment relates that, in the opinion of the Corporation, is attributable to the activities of the Corporation with respect to dairy products of the class to which that separate account relates.



Corporation may make certain payments from Fund.

**17.** The Corporation may, after consultation with the Advisory Committee and with the approval of the Minister, make to persons engaged in the production, storage, distribution or sale of dairy products payments of any of the following kinds:—

- (a) payments to meet expenses incurred in respect of the production of dairy products;
- (b) payments to meet freight or storage costs, or other marketing costs, in respect of dairy products;
- (c) payments in the nature of incentives in respect of the production, distribution, storage or sale of dairy products;
- (d) any other payments in connexion with the production, storage, distribution or sale of dairy products.

Moneys of Fund to be kept in separate bank account.

**18.** The Corporation shall open and maintain a separate bank account for the purposes of the Fund and shall pay into that bank account all moneys received by the Corporation that are to be credited to the Fund and shall draw from that bank account all moneys that are expended from the Fund.

Investment of moneys of Fund.

**19.** Moneys of the Fund may be invested by the Corporation—

- (a) in interest-bearing deposits with an approved bank;
- (b) in any securities of, or guaranteed by, the Commonwealth or a State;
- (c) by way of loan to a corporation, being a corporation declared by the Reserve Bank for the purposes of regulations in force under the *Banking Act 1959* to be an authorized dealer in the short-term money market, upon the security of securities of the Commonwealth; or
- (d) in any other manner approved by the Treasurer.

#### PART IV—MISCELLANEOUS

Power to call for returns.

**20.** An authorized person may, by notice in writing, require a person to furnish to him, within the time specified in the notice, such return or information in relation to matters relevant to the operation of this Act as is specified in the notice, including a return or information verified by statutory declaration.

Access to premises.

**21.** (1) An authorized person may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the functions of an authorized person under this section.

- (2) Where an authorized person has reason to believe that—
  - (a) premises are premises in which dairy products are produced or stored; or
  - (b) there are on premises examinable documents,

the authorized person may make application to a Justice of the Peace for a warrant authorizing the authorized person to enter the premises for the purpose of exercising the functions of an authorized person under this section.

(3) If, on an application under sub-section (2), the Justice of the Peace is satisfied, by information on oath or affirmation—

- (a) that there is reasonable ground for believing that—
  - (i) the premises to which the application relates are premises in which dairy products are produced or stored; or
  - (ii) there are on those premises any examinable documents;
- and
- (b) that the issue of the warrant is reasonably required for the purposes of this Act,

the Justice of the Peace may grant a warrant authorizing the authorized person, with such assistance as he thinks necessary, to enter the premises, during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of exercising the functions of an authorized person under this section.

(4) Where an authorized person has entered any premises in pursuance of sub-section (1) or in pursuance of a warrant granted under sub-section (3), he may exercise the functions of an authorized person under this section.

(5) A person shall not, without reasonable excuse, obstruct or hinder an authorized person acting in pursuance of sub-section (1) or in pursuance of a warrant granted under sub-section (3).

Penalty: \$1,000.

(6) The functions of an authorized person under this section are—

- (a) to search for, examine and take stock of any dairy products; and
- (b) to search for, inspect, take extracts from and make copies of any examinable documents.

(7) In this section—

“dairy products” include products made from dairy products;

“examinable documents” means—

- (a) any books, documents or papers relating to financial dealings between the proprietor of a factory at which dairy products are produced and persons who supply to the factory milk, cream or other substance from which dairy products are produced; or
- (b) any books, documents or papers relating to the production, storage, sale, purchase, import or export of dairy products.

**22.** (1) A person shall not fail or neglect duly to furnish a return or information that he is required under this Act or the regulations to furnish.

Offences in relation to returns, &c.

(2) A person shall not present to an officer or other person doing duty in relation to this Act or the regulations an account, book or document, or make or furnish to such an officer or person a statement or return, that is false or misleading in a material particular.

Penalty: \$1,000.

**Averments.** 23. In proceedings for the recovery of a debt referred to in section 7 or sub-section 15 (2), a statement or averment in the complaint, claim or declaration of the plaintiff is *prima facie* evidence of the matter so stated or averred.

**Appointment of authorized persons.** 24. The Minister may, by writing signed by him, appoint a person, or persons included in a class of persons, to be an authorized person or authorized persons, as the case may be, for the purposes of a specified provision of this Act.

**Regulations.** 25. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act or for facilitating the collection or recovery of amounts of levy and, in particular—

- (a) providing for the manner of payment of levy;
- (b) requiring proprietors of factories to keep records relating to the production of dairy products in their factories (including records relating to cheese during a maturation period) and to the storage, sale, purchase, import or export of such products;
- (c) requiring persons to furnish returns for the purposes of this Act, including returns to the Corporation;
- (d) providing that a stabilization payment is not to be payable, or that payment of a stabilization payment may be withheld, where a provision of the regulations has not been complied with; and
- (e) prescribing penalties not exceeding a fine of \$500 for offences against the regulations.

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## SCHEDULE

Section 3

### REPEALED ACTS

*Dairying Industry Levy Act 1970*

*Dairying Industry Levy Collection Act 1970*

*Dairying Industry Equalization Act 1970*

*Dairying Industry Equalization Legislation Referendum Act 1970*

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### NOTE

1. Act No. 51, 1977; assented to 7 June 1977.